IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.280 OF 2005

M/s.South India Stock Broking
Services Pvt.Ltd. ...Petitioner

v/s.

Ajmera & Shah Associates ...Respondents

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Mr.Anil Menon for the Petitioner.
None for the Respondents.

CORAM: D.K.DESHMUKH, J.

DATED: 5TH SEPTEMBER,2005

P.C.:

1. The arbitral tribunal has rejected the claim finding that the claim as framed and filed was barred by the law of limitation. The shares were purchased on 10-8-1998. There is no explanation why if the shares were not transferred further, they were not

lodged for registration till 30-6-2000. After they were lodged for registration, on behalf of the company an intimation was given on 21-7-2000 that shares cannot be transferred. Therefore, normally the cause of action would arise on the date on which the Petitioner was informed by the company that the shares cannot be transferred. The case of the Petitioner on limitation was that he did not receive the letter dated 21-7-2000, but received a copy of it only in the year 2003. Therefore, the burden entirely was on the Petitioner to lead evidence and prove that he did not receive the intimation from the company dated 21-7-2000. Admittedly, there is no evidence led to prove that the company did not inform the Petitioner on 21-7-2000. It is now a settled law that the cause of action for making the reference to arbitration arises on the same day on which the cause of action for filing the civil suit, had there been no arbitration clause, would have been arisen. If that is so, the cause of action had accrued to the Petitioner when he purchased the shares.

2. The learned counsel appearing for the Petitioner relying on the judgment of the learned single judge of this court in the case of Force Shipping Limited

v/s. Ashapura Minechem Limited. 2003(3) Arb.LR 432 (Bombay) submits that as the Respondent had not raised issue of limitation, the tribunal could not have decided it. In my opinion, this is not the proposition laid down in that judgment. The bye-laws of the National Stock Exchange lays down a special period of limitation of six months, from the date of accrual of cause of action, for making the reference. Therefore, the burden is entirely on the Petitioner to plead and then lead evidence to prove as to what is the date on which the cause of action accrued to him. The fact whether the Petitioner received the intimation from the company in 2000 or 2003 was within the special knowledge of the Petitioner, therefore, the burden entirely was on the Petitioner to prove the fact. It is clear that the transaction was of the year 1998 and for no reason the Petitioner kept the shares with himself without lodging them for transfer, and therefore, it is obviously unjust to reck up the claim about which the Petitioner himself was not vigilant.

3. Taking overall view of the matter, therefore, in my opinion, it will not be appropriate to interfere with the award made by the arbitral tribunal.

Petition is, therefore, rejected.

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